IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 512 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MINABEN B PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 512 of 2000

MR MM TIRMIZI for Petitioner No. 1

Ms NANDINI JOSHI, AGP for Respondent No. 1

MR UI VYAS for Respondent No. 3

RULE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/08/2001

ORAL JUDGEMENT

The petitioner is a Government recognized agent for the Postal Recurring Deposit Scheme since 1991. Earlier, the scheme of the department was that a person opening a Fixed Deposit with the Postal Department was

not permitted to encash the same prematurely before expiry of one year from the date of deposit. That rule, however, came to be amended by the notification dated 4.11.1999 (Annexure "A" to the petition) providing that "the holder of an account may prematurely close the account after three years from the date of opening of the account provided that the interest at the rate applicable from time to time to Post Office Savings Account shall be payable on such premature account. However, no premature closure of account is permissible until the period for which the advance deposits made under Rule B is over."

The grievance in this petition is that the said Rule cannot be given retrospective effect in respect of Fixed Deposit accounts which were opened with the respondent department prior to 4.11.1999.

2. Rule was issued on the petition on 6.3.2000. Affidavit in reply is filed by Mr NL Khatri, Regional Director, National Savings Scheme, Gujarat, respondent No. 2 herein. It is pointed out in the reply affidavit that the recurring deposit scheme is for 5 years and not for any lesser period. Hence, when the petitioner persuaded the depositors to invest their money with the Post Office under the recurring deposit scheme, the investment was meant to be for five years and not for any shorter duration. It is further pointed out that the interests of the investors were required to be protected as the agents were misleading their clients to prematurely withdraw the money every year so that all the monies could be reinvested every year with the result that on the one hand the agents like the petitioner could earn commission every year and on the other hand, the very purpose of the scheme to attract the investors to medium term investment for five years was being defeated.

3. At the hearing of the petition, the learned counsel for the parties have relied upon their respective pleadings.

4. Having heard the learned counsel for the parties, it appears to the Court that while the object underlying the amendment to the Rules appears to he laudable, the only question is whether the Rule is applicable prospectively or whether it would apply to deposits made before the amendment came into force. The amendment came into force on the date of its publication in the official gazette on 4.11.1999. The persons who had opened their recurring deposit accounts with the respondent-department prior to 4.11.1999 were clearly informed that it was open to them to prematurely encash the amount after expiry of

one year from the date of opening of the account. However, in view of the amendment to Rule 9(A) which has come into force from 4.11.1999, such investors cannot withdraw their monies before the expiry of three years from the date of opening of the account. Since the amended Rules have come into force only with effect from the date of their publication in the official gazette, the respondents not are justified in applying the amended Rule retrospectively.

5. The respondents are accordingly directed to permit premature closure of Fixed Deposit Accounts on the basis of the Rules which were applicable at the relevant time when the Fixed Deposit Accounts were opened, that is to say, if the accounts were opened before 4.11.1999 the respondents shall permit premature closure of account/s after expiry of one year from the date of opening of the account with the respondent-department. The respondent-department is at liberty to apply the amended Rule in respect of Fixed Deposit accounts which are opened on or after 4.11.1999.

6. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)
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